

**UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

CONSTANCE WATERWORTH, as mother )  
and next friend of CHRIST SAM MESSINO, )  
IV, a minor, and as Special Administrator of )  
the ESTATE OF CHRIST SAM )  
MESSINO, III, )

Plaintiff, )

v. )

CITY OF JOLIET, WILLIAM OTIS, )  
and VON STEIN, )

Defendants. )

No. 17 C 4990

Judge Jorge L. Alonso

**ORDER**

Defendants' motion to dismiss [56] is granted, and the Court hereby strikes Count III from plaintiff's third amended complaint. Motion hearing date of 8/15/18 is stricken.

**STATEMENT**

The Court previously dismissed with prejudice plaintiff's Count III for malicious prosecution on the grounds that the claim was barred by probable cause. When plaintiff filed the third amended complaint, plaintiff again included Count III for malicious prosecution.

Plaintiff seems to think Count III needs to be included to preserve it for appeal, but that is simply not so. *See Serritella v. Markum*, 119 F.3d 506, 512 n. 6 ("[Plaintiff's counsel's] concern that he was required to replead the dismissed claim lest he be found to have waived the issue on appeal has no foundation in the law of this Circuit (or any other of which we are aware)"). Accordingly, defendants' motion to dismiss is granted, and the Court strikes Count III from plaintiff's third amended complaint.

**SO ORDERED.**

**ENTERED:** August 13, 2018



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**JORGE L. ALONSO**  
United States District Judge